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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,433	04/20/2001	Claude Jarkae Jensen	10209.56	1737

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 04/10/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/839,433

Applicant(s)

JENSEN ET AL.

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Claims 1-27 are included in the prosecution of this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by

Wadsworth et al (6214351).

Wadsworth et al teaches morinda citrifolia oil, which can be used in cosmetics (col. 3, line 42).

Note that Wadsworth is considered 102e since the claims are composition claims and the intended use does not hold patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-7, 11-12, 14-19, 22, 24, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Krog et al (5945092) in combination with Wadsworth et al (6214351).

Krog et al teach a lipstick composition containing ozokerite, aloe extract, and dimethicone (Note examples). The composition can contain oils such as essential oils in the amount of .1-20% (col.8, lines 1-25). Further, the reference teaches other suitable waxes such as petroleum, paraffin, squalene, and beeswax in an amount of 1-40% (col. 7, lines 48-66). Krog et al teach suitable silicones such as dimethicone and phenyl trimethicone (col. 8, lines 55-60). Lanolin and triglycerides are taught (col. 8, lines 27-31).

Krog et al do not teach instant essential oil.

Wadsworth et al teaches morinda citrifolia oil, which can be used in cosmetics (col. 3, line 42). The reference discloses that morinda citrifolia is an essential oil that contains several different fatty acids and an antioxidant such as BHT or vitamin E acetate is added to prevent spoilage of the oil (col. 3, lines 35-55 and Table 1). Further, the reference teaches the oil containing vitamin E (pg. 4, line 32 to pg. 5, lines 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use morinda citrifolia in Krog et al's composition since Wadsworth teaches that the instant oil contains essential fatty acids which are known for their conditioning properties and Krog et al teach an essential oil in the formulation. Further motivation is, vitamin E is known in the cosmetic art as an antioxidant and a conditioning agent.

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Claims 1-18, 20, and 22- 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (5503825) in combination with Wadsworth et al (6214351).

Lane teaches an aloe vera lip balm composition. Lane teaches suitable vehicles such as petroleum, silicon oils, paraffin, beeswax, ozokerite, cetyl alcohol, and isopropyl myristate, and fatty acids (col. 4, lines 19-53). Further, UV absorbers such as salicylic acid derivatives, derivatives of cinnamic acids, and benzophenone derivatives (col. 4, lines 54-62). (Note example)

Lane does not teach instant oil.

Wadsworth et al teaches morinda citrifolia oil, which can be used in cosmetics (col. 3, line 42). The reference discloses that morinda citrifolia is an essential oil that contains several different fatty acids and an antioxidant such as BHT or vitamin E acetate is added to prevent spoilage of the oil (col. 3, lines 35-55 and Table 1). Further, the reference teaches the oil containing vitamin E (pg. 4, line 32 to pg. 5, lines 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use morinda citrifolia in Lane's lip balm composition since Wadsworth teaches the instant oil contains essential fatty acids and fatty acids are known for their conditioning properties. Further motivation is, vitamin E is known in the cosmetic art as an antioxidant and a conditioning agent.

Further, in the absence of showing the criticality of the instant ester (isopropyl lanolate and isocetyl stearate), it is deemed obvious to use various ester vehicles since Lane teaches the use of an ester in the lip formulation.

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Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (5503825) or Krog et al in combination with Wadsworth et al (6214351), in further view of McGinity et al (5597849).

As set forth above, Wadsworth teaches the instant oil and Lane teaches a lip balm composition.

The references do not teach sorbitan monoleate.

McGinity et al teach a stick composition containing an active agent and wax. Further, the reference teaches the instant surfactant to enhance stability of the stick composition (col. 2, lines 18-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the instant surfactant to provide stability to the composition as taught by McGinity.

Conclusion

Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

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SSG

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April 1, 2002

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JOSE G. DEES
SUPERVISORY PATENT EXAMINER

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